

# **EXHIBIT E**

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM ALSUP

ORACLE AMERICA, INC.,	)
	)
PLAINTIFF,	)
	)
VS.	) NO. C 10-03561 WHA
	)
GOGLE, INC.,	) SAN FRANCISCO, CALIFORNIA
	) WEDNESDAY
DEFENDANT.	) FEBRUARY 9, 2011
	) 11:00 O'CLOCK A.M.

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**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

**FOR PLAINTIFF:**

**MORRISON & FOERSTER LLP**

755 PAGE MILL ROAD  
PALO ALTO, CALIFORNIA 94304-1018

**BY:** **RICHARD S. BALLINGER, ESQUIRE**  
**ROMAN A. SWOOPES, ESQUIRE**  
**MARC DAVID PETERS, PH.D., PARTNER**  
**MICHAEL A. JACOBS, PARTNER**  
**DIANE C. GABL, ATTORNEY AT LAW**  
**650-251-3974**

AND

**ANDREW C. TEMKIN, CORPORATE COUNSEL**

500 ORACLE PARKWAY  
M/S 50P7  
REDWOOD SHORES, CALIFORNIA 94065

FURTHER APPEARANCES ON NEXT PAGE.

**REPORTED BY: KATHERINE WYATT, CSR 9866, RMR, RPR**

**OFFICIAL REPORTER - US DISTRICT COURT**

**COMPUTERIZED TRANSCRIPTION BY ECLIPSE**

## **FURTHER APPEARANCES:**

**ALSO FOR PLAINTIFF:**

**BOIES, SCHILLER & FLEXNER LLP**  
1999 HARRISON STREET  
SUITE 900  
OAKLAND, CALIFORNIA 94612  
**BY: STEVEN C. HOLTZMAN, ESQUIRE**

**FOR THE DEFENDANT:**

**KING & SPALDING LLP**  
1185 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10036-4003

AND

**KING & SPALDING LLP**  
100 N. TRYON STREET  
SUITE 3900  
CHARLOTTE, NORTH CAROLINA 28202  
**BY: STEVEN T. SNYDER, ESQUIRE**

AND

**RENNY HWANG, ASSOCIATE LITIGATION  
COUNSEL**  
GOOGLE  
1600 AMPHITHEATRE PARKWAY  
MOUNTAIN VIEW, CALIFORNIA 94043

1 YOUR HONOR.

2 **THE COURT:** WHAT?

3 **MR. WEINGAERTNER:** THAT'S WHAT WE WERE WONDERING,  
4 YOUR HONOR. WE HAD A DISCUSSION ABOUT THAT.

5 **THE COURT:** CAN I ASK YOU A QUESTION ABOUT THIS CASE?  
6 MAYBE I SHOULDN'T.

7 **MR. JACOBS:** NO, GO AHEAD.

8 **THE COURT:** I'M JUST WONDERING ABOUT THE THEORY  
9 SINCE -- I DON'T KNOW ENOUGH ABOUT THIS TO SAY, BUT SOME PEOPLE  
10 WOULD HAVE THOUGHT THAT JAVA WAS IN THE PUBLIC DOMAIN AND THAT  
11 NOBODY OWNED IT, BECAUSE MANY PEOPLE HAVE BEEN HEARING ABOUT  
12 JAVA FOR 30 YEARS, SO HOW COULD ANYBODY OWN IT?

13 **MR. JACOBS:** WELL, IT DEPENDS ON WHAT "IT" IS, YOUR  
14 HONOR.

15 **THE COURT:** ALL RIGHT.

16 **MR. JACOBS:** SO, FOR EXAMPLE, THE JAVA PROGRAMMING  
17 LANGUAGE, WE'RE NOT ASSERTING THAT WE OWN THAT PROGRAMMING  
18 LANGUAGE FOR PURPOSES OF THIS CASE. BUT WE ARE ASSERTING,  
19 OBVIOUSLY, WITH RESPECT TO THE PATENTS THAT WE HAVE PATENT  
20 RIGHTS.

21 WE WERE JUST TALKING ABOUT --

22 **THE COURT:** PATENT RIGHTS ON WHAT?

23 **MR. JACOBS:** ON PATENTS THAT HAPPEN TO HAVE ARISING  
24 FROM THE INNOVATIONS ASSOCIATED WITH JAVA.

25 **THE COURT:** HOW IS THAT DIFFERENT FROM JUST USING THE

1 JAVA CODE ITSELF?

2 **MR. JACOBS:** WELL, THE JAVA CODE -- SO THE JAVA CODE  
3 ITSELF IS NOT IN THE PUBLIC DOMAIN. THE JAVA CODE ITSELF IS  
4 LICENSED UNDER OPEN SOURCE LICENSES THAT HAVE THEIR OWN BENEFITS  
5 TO ORACLE AND TO THE OPEN SOURCE COMMUNITY.

6 GOOGLE HAS NOT AVAILED ITSELF OF THOSE OPEN SOURCE  
7 LICENSES. IT CHOSE A DIFFERENT LICENSING PATH WITH ANDROID,  
8 SO --

9 **THE COURT:** SEE, I DON'T KNOW ENOUGH ABOUT WHAT THAT  
10 "OPEN SOURCE" MEANS, SO I HAVE A FEELING I SHOULD PROBABLY JUST  
11 LET IT LIE. BUT SINCE I LET YOU HAVE A MOMENT, LET'S HEAR FROM  
12 THE OTHER SIDE, SO YOU HAVE EQUAL TIME.

13 **MR. WEINGAERTNER:** WELL, THANK YOU, YOUR HONOR.

14 WE'RE ACTUALLY GLAD TO HEAR MR. JACOBS, I BELIEVE,  
15 TAKE THE POSITION THAT THE JAVA LANGUAGE WASN'T PROTECTED,  
16 BECAUSE I THINK THERE WAS AN OPEN ISSUE ABOUT THAT.

17 WE WERE ACTUALLY UNDER THE IMPRESSION THAT THEY WERE  
18 TAKING THAT POSITION. WE'RE ACTUALLY TRYING TO SORT OUT EXACTLY  
19 WHAT THEIR POSITIONS ARE, AND WE'RE GLAD THAT YOUR HONOR RAISED  
20 THIS ISSUE, BECAUSE "JAVA" IS A TERM THAT IS USED EXTREMELY  
21 BROADLY IN THIS CASE TO COVER LANGUAGE, TO COVER PLATFORM.

22 AND I THINK THEY WANT IT TO COVER PATENTS, ALTHOUGH I  
23 THINK WE'RE ON THE SAME PAGE AS YOUR HONOR THAT THEY ARE --

24 **THE COURT:** I'M NOT ON ANY PAGE. PLEASE DON'T SAY  
25 THAT. DON'T SAY THAT. I DON'T KNOW ENOUGH ABOUT THIS TO BE ON

1 ANY PAGE. SO I JUST ASKED THE QUESTION.

2 **MR. WEINGAERTNER:** OKAY. LET ME REPHRASE THAT.

3 WE'RE ALSO NOT ON THE SAME PAGE AS YOUR HONOR.

4 **THE COURT:** ALL RIGHT. AT LEAST YOU ASKED THE SAME  
5 QUESTION. ALL RIGHT.

6 ALL RIGHT. SO I NEED TO ALERT YOU ALL WHILE I GOT YOU  
7 HERE THAT STARTING MARCH 7TH -- DID I SEND OUT SOMETHING ON THIS  
8 ALREADY?

9 **MR. JACOBS:** I DON'T --

10 **THE COURT:** ALL RIGHT. STARTING MARCH 7TH I WILL BE  
11 IN A LARGE GANG CASE THAT WILL -- CRIMINAL PROSECUTION -- THAT  
12 WILL PROBABLY GO SIX MONTHS, FOUR MONTHS, SIX MONTHS, SOMEWHERE  
13 IN THERE.

14 SO IF YOU ARE GOING TO FILE ANY MOTIONS, I MAY HAVE  
15 TO ASK YOU TO DO A PROCEDURE WHEREBY YOU CAN'T FILE ANY MOTIONS  
16 UNLESS YOU GET PERMISSION IN ADVANCE.

17 SO LET ME ASK YOU: DO EITHER OF YOU HAVE MOTIONS  
18 THAT YOU ARE CONTEMPLATING? IF YOU DO, I MIGHT AS WELL DEAL  
19 WITH IT RIGHT NOW.

20 **MR. BABER:** AGAIN, YOUR HONOR, IF I MAY.

21 **THE COURT:** SURE. COME ON UP.

22 **MR. BABER:** YES. BRUCE BABER FROM KING & SPALDING.

23 WE ARE CONTEMPLATING AN EARLY MOTION FOR SUMMARY  
24 JUDGMENT ON THE COPYRIGHT COUNT. THERE'S SEVEN PATENTS ASSERTED  
25 AND TWO COPYRIGHTS, AND WE BELIEVE THAT THE COPYRIGHT CLAIM

1 SHOULD FAIL, AND WE ARE PREPARING AN EARLY MOTION ON THAT.

2                   **THE COURT:** IS THIS SOMETHING THAT COULD BE EASILY  
3 CURED BY PLEADING AROUND THE PROBLEM?

4                   **MR. BABER:** NO, YOUR HONOR. IT HAS NOTHING TO DO  
5 WITH THE PLEADING. IT HAS TO DO WITH THE SUBSTANCE OF THE  
6 CLAIM. I'M HAPPY TO GO INTO IT IN AS MUCH DETAIL AS YOU LIKE.  
7 WE THINK IT'S SOMETHING THAT CAN'T BE CURED. IT'S JUST THAT --  
8 IN FACT, IT RELATES TO ONE OF THE ISSUES YOU JUST RAISED, WHICH  
9 IS THE "JAVA PROGRAMMING LANGUAGE," AS YOU PUT IT, THERE ARE  
10 CERTAIN PIECES OF THE ANDROID THAT ARE THERE SO THAT PROGRAMS  
11 WRITTEN IN THE JAVA LANGUAGE WILL RUN RIGHT.

12                   THAT'S THESE API'S. OKAY? SO THAT --

13                   **THE COURT:** WHAT IS AN API?

14                   **MR. BABER:** IT'S AN APPLICATION PROGRAMMING  
15 INTERFACE, WHICH BASICALLY ALLOWS ONE COMPUTER SOFTWARE PROGRAM  
16 TO SAY TO ANOTHER ONE:

17                   "DO THIS FOR ME."

18                   OKAY? IT MAKES A CALL, AND IT ASKS THE OTHER PROGRAM  
19 TO PERFORM A FUNCTION.

20                   AND IN JAVA PROGRAMMING LANGUAGE IT HAS THESE  
21 COMMANDS. IT SAYS:

22                   "GO ASK THIS TO DO THAT. GO ASK THIS OTHER  
23 THING TO DO SOMETHING ELSE."

24                   AND THOSE, THERE ARE SOME PIECES OF THOSE KINDS OF  
25 JAVA API'S THAT ARE IN THE ANDROID THAT ARE THERE SO THAT

1 PROGRAMS IN THE JAVA LANGUAGE WILL RUN CORRECTLY. AND THAT'S  
2 WHAT THEY BASE THE COPYRIGHT INFRINGEMENT CLAIM ON, PRIMARILY.

3 **THE COURT:** IS THIS A SUMMARY JUDGMENT MOTION?

4 **MR. BABER:** YES, YOUR HONOR, IT IS.

5 **THE COURT:** WELL, HERE'S WHAT YOU OUGHT TO DO. DON'T  
6 FILE THAT YET. FILE A THREE-PAGE PRECIS, P-R-E-C-I-S.

7 AND IF IT'S -- I WON'T SAY -- I WILL IF IT'S GOT  
8 ENOUGH PLAUSIBILITY THAT I THINK I CAN WORK IT IN. I WON'T SAY  
9 THAT -- THAT DOESN'T MEAN IT WILL BE GRANTED. IT JUST MEANS IT'S  
10 IN THE BALLPARK OF PLAUSIBILITY, THEN WE WILL SET A SCHEDULE FOR  
11 THAT.

12 BUT I NEED TO IMPOSE SOME KIND OF -- SOME KIND OF WAY  
13 TO PROTECT MYSELF AGAINST HAVING TOO MUCH MOTION PRACTICE, AT  
14 LEAST FOR THE NEXT FEW MONTHS.

15 I'M ALREADY WITHIN 30 DAYS OF THIS TRIAL, AND IT'S  
16 NOT GOING TO GO AWAY. IT'S A MAJOR PROBLEM, A MAJOR TIME  
17 COMMITMENT.

18 SO ALL RIGHT. SO CAN YOU DO A THREE-PAGE LETTER?

19 AND THEN, MR. JACOBS, YOU CAN FILE A THREE-PAGE -- NO  
20 ATTACHMENTS. LOOK AT THIS (INDICATING). I ASKED FOR -- LOOK AT  
21 THIS (INDICATING). I ASKED FOR A THREE-PAGE THING. AND THIS IS  
22 WHAT MORRISON & FOERSTER GAVE ME WITH FOUR INCHES.

23 JUST THREE PAGES, NO ATTACHMENTS. NO -- NOTHING BUT  
24 JUST SUMMARY. AND THEN, I CAN TELL WHETHER OR NOT THERE'S  
25 ENOUGH PLAUSIBILITY. AND ALSO WHY IT OUGHT TO BE HEARD NOW AS

## 1 CERTIFICATE OF REPORTER

2 I, KATHERINE WYATT, THE UNDERSIGNED, HEREBY CERTIFY  
3 THAT THE FOREGOING PROCEEDINGS WERE REPORTED BY ME, A CERTIFIED  
4 SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED BY ME INTO  
5 TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE  
6 RECORD OF SAID PROCEEDINGS.

7 I FURTHER CERTIFY THAT I AM NOT OF COUNSEL OR  
8 ATTORNEY FOR EITHER OR ANY OF THE PARTIES IN THE FOREGOING  
9 PROCEEDINGS AND CAPTION NAMED, OR IN ANY WAY INTERESTED IN THE  
10 OUTCOME OF THE CAUSE NAMED IN SAID CAPTION.

11 THE FEE CHARGED AND THE PAGE FORMAT FOR THE  
12 TRANSCRIPT CONFORM TO THE REGULATIONS OF THE JUDICIAL  
13 CONFERENCE.

14 IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS  
15 10TH DAY OF FEBRUARY, 2011.

16  
17  
18  
19 \_\_\_\_\_  
20 /S/ KATHERINE WYATT  
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23  
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